

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

WP(C).No. 31883 of 2004(U)

PETITIONER:

**S.SEETHARAMAN POTTI,
S/O. SUBRAYAN POTTI, AGED 56 YEARS,
TECHNICAL ASSISTANT (RETD.), OFFICE OF THE
ASSISTANT DIRECTOR OF SURVEY & LAND RECORDS
(RE-SURVEY) THRIKKAKARA, CIVIL STATION, ERNAKULAM
DISTRICT, (RESIDING AT DEVI KRIPA, KUMBALAM)**

**BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA**

RESPONDENTS:

- 1. THE STATE OF KERALA, REPRESENTED BY THE
SECRETARY TO GOVERNMENT REVENUE DEPARTMENT,
SECRETARIAT, TRIVANDRUM (CONVENOR, D.P.C.(HIGHER)
SURVEY & LAND RECORDS DEPARTMENT)**
- 2. THE DIRECTOR OF SURVEY & LAND RECORDS,
TRIVANDRUM (MEMBER, D.P.C. (HIGHER) SURVEY & LAND
RECORDS DEPARTMENT)**

BY GOVERNMENT PLEADER SRI.BIJOY CHANDRAN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WPC.NO.31883/2004 U

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1: COPY OF THE NOTIFICATION NO.SY.24724/2000 OF THE 2ND RESPONDENT DTD. 01/02/2002.
- EXT.P2: COPY OF THE PROCEEDINGS NO.SY.G6.779/2003 OF THE 2ND RESPONDENT DTD. 26/01/2003.
- EXT.P3: COPY OF THE G.O.(RT) NO.3326/2001/RD OF THE GOVERNMENT DTD. 20/12/2001.
- EXT.P4: COPY OF THE JUDGMENT IN O.P.NO.5006/2003 U DTD. 13/02/2003.
- EXT.P5: COPY OF THE G.O.(RT) NO.1051/2003/RD OF THE GOVERNMENT DTD. 11/04/2003.
- EXT.P6: COPY OF THE CIRCULAR NO.5328/RULES.1/99/P&ARD OF THE GOVERNMENT DTD. 03/06/1999.
- EXT.P7: COPY OF THE INTERIM ORDER OF THIS HON'BLE COURT IN C.M.P.NO.23950/2003 IN O.P.NO.14240/2003 T DTD.21/05/2003.
- EXT.P8: COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN O.P.NO.14240/2003 T DTD. 25/03/2004.
- EXT.P9: COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN O.P.NO.4691/2000-H. DTD. 25/07/2000.
- EXT.P10; COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN CON.CASE NO.1555/2004 DTD. 04/02/2005.
- EXT.P11: COPY OF THE G.O.(RT) NO.1048/2004/RD OF THE GOVERNMENT DTD. 18/02/2005.
- EXT.P12: COPY OF THE G.O.(RT)NO.6585/2005/RD OF THE GOVERNMENT DTD. 19/12/2005.

/TRUE COPY/

P.S.TO JUDGE

KSS

K. BALAKRISHNAN NAIR, J.

W.P.(C) No.31883 of 2004-U

JUDGMENT

The petitioner was promoted as Technical Assistant on 1.6.2002 in the Survey and Land Records Department. The said promotion was ordered, based on Ext.P1 DPC list, published on 1.2.2002. The petitioner was found suitable and eligible for promotion to the vacancy of Technical Assistant, which arose on 14.12.2000. He retired from service on 31.5.2003. The petitioner submits, if the Assistant Directors were promoted in time as Deputy Directors, there would have arisen a vacancy of Assistant Director on 1.4.2001 and another vacancy on 1.7.2001. He was entitled to be promoted to that vacancy, provided he was promoted to the post of Technical Assistant with retrospective effect from the date of occurrence of the vacancy and his probation was declared in time. So, this writ petition was filed, seeking the following reliefs:

“(a) issue a writ of mandamus or other appropriate writ order or direction commanding the respondents to grant promotion to the petitioner as Assistant Director of Survey and Land Records (Office Wing) with effect from 1.7.2001 with all attendant benefits.

(b) direct the respondents to consider the claims of the petitioner for promotion as Assistant Director of Survey and Land Records (Office Wing) applying Rule 2(6)(f) and also proviso to Rule 28(a)(i) of the K.S. & S.S.R., for the purpose of duty and probation in the cadre of Technical Assistant and intimate the outcome within a time limit.

(c) pass such other order or direction which this Hon'ble Court may deem fit and proper to grant in the circumstances of the case.

(d) issue a writ of mandamus or other appropriate writ order or direction commanding the respondents to assign the promotion of the petitioner as Technical Assistant with effect from 14.12.2000 and give the monetary benefits thereof.

(e) declare the probation in the cadre of Technical Assistant by counting the service in the cadre with effect from 14.12.2000.”

2. The claim of an incumbent for promotion has to be decided with reference to the date of occurrence of the vacancy. For various reasons there will be delay in ordering promotion. So, the date of actual promotion cannot have any effect on the claim of the incumbent for various benefits. In this case, the DPC also found him suitable and eligible for promotion in the vacancy that arose on 4.12.2000. Therefore, there is no justification for not promoting him from that date without

arrears of salary. It is permissible to count the said notional service as duty, by virtue of Rule 2(6)(f) of Part I, K.S. & S.S.R. So, the respondents are further bound to consider the claim of the petitioner for declaration of probation reckoning the notional service and also consider him for further promotion in the vacancy of Assistant Director, which arose before his retirement.

3. The petitioner may file a detailed representation before the 1st respondent, setting out his claim for retrospective promotion to the post of Technical Assistant and also for further promotion as Assistant Director. In that event the 1st respondent will consider the same and pass orders thereon, after affording an opportunity of being heard to the petitioner within four months from the date of receipt of a copy of this judgment. The writ petition is disposed of as above.

18th July, 2007.

K.BALAKRISHNAN NAIR, JUDGE.

Nm/

